

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAW PAR HEALTH CARE, LTD., et al.,

Plaintiffs,

05 Civ. 4152 (RWS)

- against -

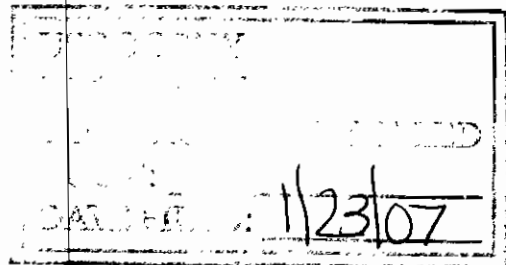
MEMORANDUM OPINION

WARDARD CHINA AND PORCELAIN, INC., et al.,

Defendants.

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Sweet, D.J.,



Defendant Harper Tran ("Tran") has moved pursuant to Rule 12(b)(6), Fed. R. Civ. P., to dismiss the Amended Complaint of Haw Par Health Care Limited and Prince of Peace Enterprises, Inc. ("Plaintiffs") against him. For the reasons stated below, the motion is denied as moot with leave to renew.

The original Complaint in this action, alleging infringement of Plaintiffs' trademarks, was filed on April 25, 2005, naming Wardard China & Porcelain, Inc. ("Wardard") as a defendant. At the time, Tran was an employee of Wardard. On December 9, 2005, a permanent injunction and default judgment was entered against Wardard.

In or about December 2005, Tran purchased the inventory of Wardard. In or about January 2006, Tran incorporated Canal

Lafayette Store Corp. ("Canal Lafayette") and signed a lease for the retail space previously occupied by Wardard. Plaintiffs filed the Amended Complaint on May 20, 2006, adding Tran and Canal Lafayette as defendants. Tran and Canal Lafayette filed an answer to the Amended Complaint on July 6, 2006.


The instant motion to dismiss the Amended Complaint against Tran in his individual capacity was filed on September 14, 2006, and was argued and marked fully submitted on October 18, 2006. At oral argument, counsel for Plaintiffs requested the imposition of sanctions against Tran and Canal Lafayette.

On January 3, 2007, Plaintiffs filed a Second Amended Complaint ("SAC").

The instant motion to dismiss is moot in light of the filing of the SAC. See Metito (Overseas) Ltd. v. General Elec. Co., No. 05 Civ. 9478 (GEL), 2006 WL 3230301, at *2 (S.D.N.Y. 2006). The motion therefore is denied with leave to renew. No showing has been made to support the imposition of sanctions at this time.

So ordered.

New York, NY
January 22, 2007


ROBERT W. SWEET
U.S.D.J.